

RAJAKARUNA
v.
DE SILVA, MINISTER OF HOUSING, CONSTRUCTION
AND PUBLIC UTILITIES AND OTHERS

SUPREME COURT.
DHEERARATNE, J.
DR. SHIRANI BANDARANAYAKE, J AND
GUNAWARDENA, J.
S.C. APPLICATION NO. 201/95.
MARCH 24, 1997.

*Fundamental Rights – Constitution, Articles 12(1) and (2) – Time limit for filing
petition – Equal treatment – Discrimination on political grounds.*

Although the petition to the Supreme Court was out of time, the Court was prepared to consider it on the merits as the petitioner was not represented by Counsel.

The allegation of victimization and violation of fundamental rights by transfer was not maintainable as the transfer was valid. The petitioner's record of service was dismal.

The evidence firmly suggests that the petitioner is actually a supporter of the present Government and there are no grounds for the allegation of victimization because of political affiliation.

APPLICATION for violation of fundamental rights.

Petitioner in person.

R. K. W. Goonesekera with Ms. S. Jayatilake for 2nd, 4th and 5th respondents.

S. Rajaratnam, S.C. for 1st, 7th and 9th respondents.

Cur. adv. vult.

May 09, 1997.

DR. SHIRANI BANDARANAYAKE, J.

The petitioner is an employee of the National Housing Development Authority since 12th February, 1986. At the time this petition was filed he was employed as a Class IX office peon. He was first recruited as a security officer (P1) and thereafter he was promoted to the post of office peon Grade IX on 01.02.1990 (P1A), and made permanent in the post of office peon Class XI on

01.01.1001 (P1B). From 01.07.94, the petitioner has been serving in the Rent Board of Review at Vipulasena Mawatha, Maradana as peon/labourer.

Since 19.08.1992, the petitioner had been facing a series of difficulties regarding the purchase of a plot of state owned land and matters connected to building a house on that land. These difficulties had led to the petitioner making a complaint at the Homagama Police Station and lodging a complaint at the Police Headquarters in Colombo against the Homagama Police.

The petitioner averred that every time when he was penalized, he sought relief through the Human Rights Centre of the Sri Lanka Foundation; that this conduct, according to the reliable information he received, made the 1st respondent, the Minister of Housing, Construction and Public Utilities angry as he considered it a personal affront. Also according to the petitioner, he has been singled out and discriminated as a United National Party supporter, on account of a letter written by him to His Excellency the then President on 15.11.1992 (P2).

The petitioner states that he received a letter from the 4th respondent, the Assistant General Manager (Administration), National Housing and Development Authority, transferring him from Colombo to Hambantota District Office (P14). The petitioner was released from Colombo on 18.05.1995 for this purpose (P14A). The petitioner appealed on 16.05.95 against his transfer (P15). He sought relief through the 3rd respondent, Director/Commission for the Elimination of Discrimination & Monitoring of Fundamental Rights (P15A). He sent a second appeal on 26.05.95 (P16). Both his appeals were rejected (P17 & P17A). The petitioner also wrote to the 1st respondent directly stating his grievance (P18). Finally, the petitioner received a letter dated 15.06.95 from the 4th respondent ordering him to report for work on or before the 7th day after receiving the said letter (P19).

The petitioner filed this application on 23.06.1995 and the directions given by the letters P14 dated 09.05.1995, P17 dated 01.06.1995, P17(B) dated 06.06.1995 and P19 dated 15.06.1995

were stayed by this Court pending the hearing and determination of the application.

The petitioner contends that since 07.09.94 – to date the 1st, 2nd, 4th, 5th, 6th and 7th respondents have by a series of acts maliciously victimised and discriminated against him violating his fundamental rights. He further contends that due to the transfer made by the 1st, 2nd and 4th respondents his fundamental rights guaranteed by Articles 12(1) and 12(2) have been violated.

The respondents have submitted that the petitioner's application has not been made in compliance with the provisions of Article 126, as it has been filed more than one month after the alleged violation, namely the transfer from Colombo to Hambantota District Office. Therefore, the respondents submit that the application should be rejected *in limine*.

The questions before us are:

- (a) whether the petition is 'out of time';
- (b) whether the petitioner was denied 'equal treatment'; and
- (c) whether he was discriminated on political grounds.

The petitioner was transferred from Colombo to Hambantota on 09.05.95 (P14) and he was released from Colombo for this purpose on 26.06.95. Even if the latter date, viz., the date of his release from Colombo, is taken into consideration it is clear that the petitioner has not come before the Supreme Court within the stipulated time limit. It was contended by the petitioner that the delay was due to his preferring appeals against the transfer. However, Mr. R. K. W. Goonesekera, Learned Counsel for the 2nd, 4th and 8th respondents, contended that the delay due to preferring appeals does not give the petitioner extra time to come before the Supreme Court.

The petitioner has sent an appeal to the Chairman/N.H.D.A. on 16.05.95 (P15). A second appeal was sent on 25.09.95 to the Chairman/N.H.D.A. requesting him to reconsider his transfer (P16). A

third appeal was sent to the Minister, Housing, Construction and Public Utilities with a copy to the Chairman/N.H.D.A. on 06.06.95 (P18) and a fourth appeal was sent to the Chairman/N.H.D.A. on 19.06.95 (P20).

Responding to the petitioner's appeals, replies were sent to him on 01.06.95 (P17) and 06.06.95 (P17B). A further letter was sent to the petitioner on 15.06.95 by the Assistant General Manager (Administration) informing the petitioner that if he is unable to report for work in Hambantota within 7 days of the receipt of the letter, he would be treated as having vacated his post (P19).

Although the petitioner may not have sought the intervention of this Court strictly within the time specified in Article 126(2), we were inclined to consider his case on merits as he was not represented by Counsel.

The 4th respondent averred that the Assistant Commissioner, Department of National Housing had by letter dated 23.03.95, requested that the petitioner be transferred from the Rent Board of Review, Maradana, with immediate effect (4R10). However, no immediate action had been taken regarding this request. The petitioner was transferred to Hambantota with immediate effect on 09.05.95 and this was at the request of the Assistant Commissioner, Department of National Housing. The 4th respondent further averred that the petitioner's transfer was not politically motivated. Also the petitioner was not singled out for transfer. There had been twenty-two other employees of the N.H.D.A. who were transferred in 1995. His appeals against the transfer had been rejected as his transfer was made due to exigencies of the service and not for any collateral purpose.

The 4th respondent further averred that the petitioner had been charged with various acts of misconduct during his period of service in the N.H.D.A. Accordingly, on 21.11.87 the petitioner was interdicted on charges of misconduct (4R13). A charge sheet was issued to the petitioner (4R14). After a domestic inquiry the petitioner was found guilty of some of the charges. However, on sympathetic

grounds, petitioner's services were not terminated but he was demoted from Grade IX to GRADE X (4R15 and 4R16).

On 14.02.92, the petitioner was warned by the Manager/Maththegoda Housing Scheme on his conduct in the work place. As the petitioner disregarded the warnings issued to him, a request was made on 24.04.92 for the petitioner's transfer from the Maththegoda Housing Scheme. Thereafter, a letter was issued to the petitioner on 30.04.92 warning him that disciplinary action would be taken against the petitioner if further complaints against him were received (4R17, 4R18 and 4R19). After an inquiry, it was recommended by the Manager/Inquiries on 04.05.92 that the petitioner be transferred from the Maththegoda Housing Scheme (4R20). On 11.02.94, a charge sheet was served on the petitioner alleging various acts of misconduct (4R21).

The letter of appointment issued to the petitioner clearly states that the petitioner should be prepared to serve in any part of Sri Lanka if requested to do so (P1-para 9). The petitioner while accepting the post had agreed to this condition. From the time the petitioner started his employment in 1986, he has served in Colombo. The employment record of the petitioner and the correspondence between the Assistant Commissioner, Department of National Housing and the 4th respondent indicate that the Assistant Commissioner wanted to get the petitioner transferred out of his office. His record of service has been dismal.

In the circumstances, I am of the view that the transfer of the petitioner was valid and that in no way violates his fundamental right to equal treatment. The petitioner was fully aware that he was in a transferable service and he had consented to serve in any part of the country. For the reasons set out above, I declare that the petitioner's fundamental rights under Article 12(1) of the Constitution have not been violated.

The petitioner's second allegation is that he has been discriminated, on the basis of his political affiliations. His contention is that due to a letter written by him to the then President in 1992 (P2),

he has been singled out and discriminated as an alleged supporter of the United National Party.

According to P2, the petitioner has praised the then President for the leadership he has given to the country and has pledged his support. The petitioner has also made a request to assist him to obtain a loan in order to purchase a small piece of state land 5.6 perches in extent situated in the Dambugahawatta Housing Scheme. Other than this letter (P2) there is no material to show that the petitioner was involved with the United National Party. On the other hand, the petitioner had been the Vice President of the Sri Lanka Nidahas Sevaka Sangamaya of the N.H.D.A., a Union which supported the present Government. Furthermore, the petitioner had admitted that he was instrumental in establishing the said union (p18 – p.1). The evidence therefore, firmly suggests that the petitioner is actually a supporter of the present Government.

There is no material upon which this Court can conclude that the petitioner was victimized due to his political affiliation. In these circumstances, I declare that the petitioner's fundamental rights under Article 12(2) of the Constitution have not been violated. The application is dismissed, but without costs.

DHEERARATNE, J. – I agree.

GUNAWARDENA, J. – I agree.

Application dismissed.